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Oct 7. 1876

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~559~~. 95

THE COUNTY OF DAVIESS, PLAINTIFF IN ERROR,

vs.

ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED FEBRUARY 24, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 359.

THE COUNTY OF DAVIESS, PLAINTIFF IN ERROR,

vs.

ALFRED HUIDEKOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the [SEAL.] circuit court of the United States for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1875, thereof, between Alfred Huidekoper, plaintiff, and the County of Daviess in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said county of Daviess, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy-five.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States,
Western District of Missouri.

Allowed by—

JOHN F. DILLON, *Judge.*

2 (Indorsed:) No. 411. United States circuit court, western district of Missouri. Alfred Huidekoper, D. E, vs. County of Daviess, Mo., P. E. Writ of error. To the circuit court of the United States, western district of *of* Missouri.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In obedience to the command of the within writ of error, I herewith transmit to the Supreme Court of the United States a full, true, and complete transcript of the record and proceedings of the within entitled cause, together with all things concerning the same, as fully as the same appears and remains on file in my office.

Witness my hand at office, in the city of Jefferson, this 2nd day of February, A. D. 1876.

H. C. GEISBERG, *Clerk.*

3 The United States of America to Alfred Huidekoper, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed

in the clerk's office of the circuit court of the United States for the western district of Missouri, wherein the County of Daviess in the State of Missouri is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John F. Dillon, judge of the circuit court of the United States for the western district of Missouri, this 23rd day of November, in the year of our Lord one thousand eight hundred and seventy-five.

JOHN F. DILLON,
Judge United States Circuit Court,
Western District of Missouri.

4 (Indorsed:) 411. United States circuit court, western district of Missouri. Alfred Huidekoper, D. E., vs. The County of Daviess, Missouri, P. E. Citation.

NOVEMBER 23, 1875.

I hereby acknowledge and accept service of the within writ of citation.

ALFRED HUIDEKOPER,
By his attorney, JOSEPH SHIPPEN.

5, 6 UNITED STATES OF AMERICA,
Western District of Missouri, set.:

In the circuit court of the United States for the western district of Missouri.

Be it remembered that heretofore, to wit, on the 13th day of February, 1875, there was filed in the clerk's office of said court a petition in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In the circuit court of the United States for said district. April term, 1875.

ALFRED HUIDEKOPER, PLAINTIFF,
vs.
THE COUNTY OF DAVIESS.

The plaintiff, Alfred Huidekoper, who is a citizen of the State of Pennsylvania, complains of the County of Davies, which is a municipal corporation created and existing under the laws of the State of Missouri, and a citizen thereof.

7 And for cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 10, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bos-

taph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually, on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 10 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 11, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually, on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 11 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

8 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 21, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually, on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 21 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 22, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually, on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond, number 22, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the

city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

9 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 23, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 23, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 24, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and

bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 24, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 25, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 25 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 26, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess

County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 26 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

11 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 27, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound, to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 27 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 28, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest

at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached, which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 28 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York, which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

12 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 29, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 29 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York, which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 30, seale with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Com-

pany in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 30 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

13 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 39, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 39 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 12, sealed with its corporate seal, and signed by Peter Bear, the then presiding

justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon, number 11, formerly attached to said bond, and bearing even date therewith, a copy whereof is herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 12 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid; but the plaintiff has lost said coupon, and is therefore unable to produce the same.

14 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 31, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond, number 31, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was

demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 32, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that, by a certain interest-coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 32, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

15 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 33, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875,

being interest on said bond number 33, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remans due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 34, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 34, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

16 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 35, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two thirds majority of the qualified voters of said county, at an election held Tues-

day, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 35, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 36, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 36, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

17 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory, called railroad bond number 37, sealed with its corporate seal and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was

issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 11, formerly attached to said bond and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 37 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 38, sealed with its corporate seal and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 38 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

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19 And the plaintiff further states that the said Chillicothe and Omaha Railroad Company was organized under and by virtue of the general statutes of the State of Missouri, filed with the secretary of state on the fourteenth day of July, 1868, a certified copy whereof is herewith filed and made a part of this petition. That said bonds were executed and sold for value by the officers of said county, and the proceeds of said sale, when received, were delivered to the said railroad company in payment of a subscription of said county to the capital stock of said railroad company to aid in the construction of its railroad made in pursuance of said vote, and said county received the said capital stock and has claimed and exercised the rights of a stockholder in said com-

pany, whose railroad was in fact built and completed through said county's territory, and said county levied and collected taxes for several years to pay the interest of said bonds, and did pay several installments as they matured.

And the plaintiff further states that on the twenty-eighth day of March, 1874, the plaintiff herein instituted in this court a certain other suit against the defendant herein, which suit was designated as
20 number 261, April term, 1874, upon twenty-two interest coupons from the same bonds herein sued on, due July first, 1873, and twenty-two interest coupons from the same bonds due January first, 1874, and the defendant therein appeared and filed its demurrer to plaintiff's petition, which said demurrer was subsequently withdrawn, defendant saying nothing further in bar of the action of the plaintiff; it was therefore considered, ordered, and adjudged by the court that the plaintiff have and recover against the defendant as well the sum of fifteen hundred and eighty-three dollars and sixty-four cents for his debt and damages aforesaid assessed, as also his costs and charges in that behalf laid out and expended, and have thereof execution; and thereafter the defendant paid to the plaintiff the amount of said judgment with costs, and satisfaction thereof was duly entered of record. Wherefore plaintiff prays judgment against the defendant for the aggregate amount of the said coupons, together with interest thereon at seven per cent. per annum from maturity, costs, &c.

MEM.—The articles of incorporation above referred to are copied on page 47 of this transcript.

JOSEPH SHIPPEN,
Plaintiff's Attorney.

And thereupon, on the 13th day of February, A. D. 1875, there was issued out of said clerk's office a summons, in words and figures following, to wit:

21 *Summons.*

WESTERN DISTRICT OF MISSOURI, *set:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon the county of Davies, a municipal corporation, and a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 19th of April next, then and there to answer the complaint of Alfred Huidekoper, a citizen of the State of Pennsylvania, as set forth in the petition filed in said court on the 13th day of February, A. D. eighteen hundred and seventy-five. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 13th day of February, A. D. eighteen hundred and seventy-five. Issued at office, in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By C. M. WARD, *D. C.*

22 Upon said summons the marshal of the United States for the said district made the following return, to wit:

Marshal's return.

I hereby certify that I executed the within summons by delivering a copy of the same, together with a copy of declaration attached thereto, to John P. Smith, clerk of the county court of Davies County, on the 18th day of February, 1875, at the county of Daviess, western district of Missouri.

GEO. SMITH,
U. S. Marshal,
By T. K. SMITH,
Deputy.

And afterwards, at a regular stated term of the said circuit court of the United States, in and for the western district of Missouri, begun and held at the city of Jefferson, in said district, on the third Monday, being the 19th day of April, A. D. 1875, the following proceedings were had in this case on the 23rd day of April, in said last mentioned year, to wit:

Answer filed.

ALFRED HUIDEKOPER }
vs. } 411.
DAVIESS COUNTY. }

This day comes the defendant, by its attorney, and files its answer herein.

23 *Answer.*

In the United States circuit court for the western district of Mo.

ALFRED HUIDEKOPER }
against
DAVIESS COUNTY. }

Defendant, for answer to plaintiff's petition, denies that by its certain writings-obligatory it acknowledged itself indebted or firmly bound to the Chillicothe & Omaha Railroad Company, in manner and form as is stated in said petition, and it denies that said writings were issued under or pursuant to an order of the county court of Daviess County, or that said order was made under authority of the constitution and general statutes of Missouri, or that the same was authorized by a vote of the qualified voters of said county at an election held as is stated in said petition.

Defendant denies that by certain interest-coupons it acknowledged to owe the bearer as is stated in said petition, and denies that the same has been demanded, or that plaintiff is the owner, holder, or bearer of the same.

And for a further defense, defendant states that the question whether said county should subscribe for stock in said railroad company
24 was submitted to the qualified voters of said county at an election held in April, 1868, and that at time of said election there was no such company in existence as the Chillicothe and Omaha Railroad Com-

pany, and that said company was not organized until July after said election, and that said writings-obligatory were issued under the pretended authority of said election in violation of law, and the same are null and void.

WILLARD P. HALL,
Att'y for Def't.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 28th day of April, A. D. 1875, to wit:

Stipulation filed.

ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY.

This day comes the plaintiff, by attorney, and files a stipulation, signed by counsel, that plaintiff may file additional counts to his petition, on other coupons than those embraced in the original petition, on or before the first day of next term; and it is ordered that this case be continued until next term, in accordance with said stipulation.

25 And said stipulation so filed is in words and figures following, to wit:

Stipulations as to filing additional counts to petition.

In the circuit court of the United States for the western district of Missouri, April term, 1875.

ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY.

And now, April 27th, 1875, it is hereby stipulated and agreed by and between the parties to the above-entitled cause, that plaintiff may add further counts to his petition on other coupons than those embraced in the original petition, even including such as may have matured subsequent to the bringing of the suit, such addition to be made on or before the first day of next term, and the cause shall be continued to the next term of court.

JOSEPH SHIPPEN,
Pl'ff's Att'y.
WILLARD P. HALL,
Att'y for Def't.

And afterwards, on the 14th day of October, A. D. 1875, it being in vacation of said circuit court, the following proceedings were had in said case, to wit:

26 ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY.

This day comes the plaintiff, by Joseph Shippen, his attorney, and files additional counts to the petition herein.

Which said additional counts to petition, filed as aforesaid, are as follows, to wit:

Ad. counts filed.

In the circuit court of the United States for the western district of Missouri.

ALFRED HUIDEKOPER, PLAINTIFF,
vs.
THE COUNTY OF DAVIESS, DEFENDANT. } 411.

And now comes Alfred Huidekoper, plaintiff, and files the within additional counts, by consent of defendant, as per stipulation on file in this case:

27 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 33, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the Constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 33, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 11, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made

payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 11, for one thousand dollars, and promised to pay the same at the National Bank of Commerce in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

28 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 25, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 25, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 28, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised

to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to the bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 28, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

29 And, for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 26, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 26, for one thousand dollars, and promised to pay the same at the National Bank of Commerce in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And, for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 37, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William

Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 37, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

30 And, for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 22, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond No. 22, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York, which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And, for another and further cause of action, the plaintiff states that

the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 34, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 34, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York, which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

31 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 32, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 32, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said

coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 35, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 35, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

32 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 27, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and

bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 27, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 38, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 38, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

33 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 39, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes

of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 39, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 36, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 36, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York, which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

34 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 29, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chilicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each

year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 29, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 40, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authorityof the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon, number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 40, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

35 And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 21, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or

bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 21, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 24, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon No. 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 24, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

36 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory, called railroad bond number 30, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and

dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 30, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing obligatory called railroad bond number 31, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest coupon number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 31, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

37 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 23, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein rec ted. And plaintiff states that by a certain interest coupon, number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 23, for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon and the same still remains due and unpaid.

And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 12, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon, number 12, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of July, 1875, being interest on said bond number 12 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the

city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

38 And for another and further cause of action, the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory, called railroad bond number 12, sealed with its corporate seal, and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; which said writing obligatory was issued under and pursuant to an order of the county court of said Daviess County, made under authority of the constitution and general statutes of the State of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited. And plaintiff states that by a certain interest-coupon, number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 12 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; that the plaintiff is the owner, holder, and bearer of said coupon, and the same still remains due and unpaid.

39 Wherefore plaintiff prays for judgment against defendant upon the foregoing described coupons, as also the coupons named in his original petition, with costs and interest.

JOSEPH SHIPPEN.
Pl'ff's Att'y.

And afterwards, at the regular stated term of said circuit court, begun and held on the third Monday, the 15th day of November, A. D. 1875, at the place aforesaid, the following further proceedings were had in this case on said day, to wit:

Stipulation filed.

ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY. }

This day come the parties, by their attorneys, and file a stipulation herein, signed by counsel, that the answer filed herein on April 23rd, 1875, shall serve as answer to the supplemental as well as original petition of plaintiff.

Which said stipulation, filed as aforesaid, is in words and figures following, to wit:

40 *Stipulation.*

In the circuit court of the United States, western district of Missouri.

ALFRED HUIDEKOPER
vs. } 411.
DAVIESS COUNTY.

And now, November 15th, 1875, it is hereby stipulated and agreed that the answer heretofore filed, April 23, 1875, shall serve as answer to the supplemental as well as original petition of plaintiff.

JOSEPH SHIPPEN,
Pl'ff's Att'y.
WILLARD P. HALL,
Def't's Att'y.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 16th day of November, A. D. 1875, to wit:

Reply filed.

ALFRED HUIDEKOPER
vs. } 411.
DAVIESS COUNTY.

This day comes the plaintiff, by Joseph Shippen, esq., his attorney, and files reply to answer herein.

41 And said reply so filed is as follows, to wit:

Reply.

In the circuit court of the United States for the western district of Missouri.

ALFRED HUIDEKOPER
vs. } 411.
DAVIESS COUNTY.

For reply to the defendant's answer herein, the plaintiff says that the order of the county court of Daviess County, submitting to the qualified electors of the county the proposition to subscribe to capital stock of the Chillicothe and Omaha Railroad Company, and to issue bonds therefor, recites and states as a fact, the organization and existence of said company as a corporation, and further that the defendant, by the written instruments set forth in plaintiff's petition, acknowledged itself indebted and firmly bound to the said Chillicothe and Omaha Railroad Company, and the said instruments recite that the same were issued under and pursuant to the said order of the county court of Daviess County, dated March 31st, 1868, and confirmed by over two-thirds majority of the qualified voters of said county,
42 at an election held Tuesday, April 7th, 1868, and the plaintiff says that by said recitals and acknowledgments the defendant is estopped and precluded from denying the corporate existence of said railroad company, and manner and form set forth in its answer.

And for a second and further reply to defendant's answer, the plaint-

iff says that on the twenty-eighth day of March, 1874, the plaintiff herein instituted in this court a certain other suit against the defendant herein, which suit was designated as No. 261 of April term, 1874, upon twenty-two interest coupons from the same bonds herein sued on, due July first, 1873, and twenty-two interest coupons from the same bonds, due January first, 1874; and the defendant therein appeared and filed its demurrer to plaintiff's petition, which said demurrer was subsequently withdrawn, and defendant saying nothing further in bar of the action of the plaintiff, it was therefore considered, ordered, and adjudged by the court that the plaintiff have and recover against the defendant as well the sum of fifteen hundred and eighty-three dollars and sixty-four cents for his debt and damages aforesaid assessed, as also his costs and charges in that behalf laid out and
43 expended, and have thereof execution; and thereafter the defendant paid to the plaintiff the amount of said judgment, with costs, and satisfaction thereof was duly entered of record. And the plaintiff herein now says that the defendant is estopped and precluded from making defense in manner and form as presented in its answer herein by the said judgment heretofore rendered by this court, between the same parties on the same obligations, whereof the interest since fallen due is now sought to be collected by the plaintiff.

JOSEPH SHIPPEN,
Pl'ff's Att'y.

And afterwards at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 17th day of November, 1875.

Demurrer to reply filed.

ALFRED HUIDEKOPER
vs. } 411.
DAVIESS COUNTY.

This day come the parties, the plaintiff by Joseph Shippen, esq., his attorney, and the defendant by Willard P. Hall, esq., its attorney, and thereupon the defendant files a demurrer to the reply herein,
44 which is argued by counsel and submitted to the court.

And said demurrer so filed is as follows, to wit.:

Demurrer to reply.

In the United States circuit court for the western district of M'o.

ALFRED HUIDEKOPER
vs.
DAVIESS COUNTY.

Def't by its att'y comes and demurs to pl't's replication.

1st. Because the matters and things stated in said reply do not constitute any replication in law to the answer of defendant.

2nd. Because the matters and things stated in said second reply do not estopp def't from making the defense set up in its answer in this case.

WILLARD P. HALL,
Att'y for Def't.

And afterwards at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 22nd day of November, A. D. 1875, to wit:

45 *Demurrer withdrawn.—Reply withdrawn.—Answer withdrawn.—Petition amended.—Demurrer filed.—Demurrer overruled.—Judgment.*

ALFRED HUIDEKOPER *vs.* DAVIESS COUNTY. } 411.

This day comes the plaintiff, by Joseph Shippen, esq., his attorney, and the defendant, by Willard P. Hall, esq., its attorney, and the said cause coming on to be heard, the defendant withdraws its demurrer; the plaintiff withdraws his reply, and the defendant withdraws its answer heretofore filed, and thereupon by leave of court, the defendant consenting, the plaintiff amends his petition by attaching further allegations thereto, and thereupon defendant presented and filed its demurrer to said petition as amended, and the said demurrer having been argued by counsel, and submitted to the court, and the court being advised in the premises, orders that said demurrer be overruled, and the defendant electing to abide by its said demurrer, and refusing further to plead herein, the plaintiff, by his attorney, moves the court to enter up judgment on the said pleadings; by reason whereof the court finds that the defendant is indebted to the plaintiff by reason of the non-payment of the coupons or interest-warrants in said petition described, in the sum of one thousand five hundred and ninety-nine dollars and ninety cents ($1,599.90). It is therefore considered by the court that the
46 plaintiff, Alfred Huidekoper, recover against the defendant, the County of Daviess in the State of Missouri, the sum of one thousand five hundred and ninety-nine dollars and ninety cents ($1,599.90), together with his costs herein expended, and that execution issue therefor.

The additional allegations in plaintiff's petition referred to in the foregoing order are embraced in and form a part of the original petition hereinbefore copied, and the articles of incorporation therein referred to, and made a part of said petition, are as follows, to wit:

OFFICE OF SECRETARY OF STATE,
City of Jefferson, M'o.

I, Michael K. McGrath, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the "S't Louis, Chillicothe and Omaha Railroad Company," and the affidavit of three of the directors thereof attached thereto, filed July 14th, 1868, as appears by comparing the same with the original of said articles now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed
47 my official seal. Done at office this 18th day of February, A. D. eighteen hundred and seventy-five.

[SEAL.] MICH'L K. McGRATH,
Secretary of State.

Articles of incorporation.

Articles of association of the S't Louis, Chillicothe, and Omaha Railroad Company, made and entered into this 18th day of June, one thousand eight hundred and sixty-seven.

SEC. 1. The name of this association shall be the S't Louis, Chillicothe, and Omaha Railroad Company, and shall continue for one hundred years.

SEC. 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property.

SEC. 3. The places from and to which said railroad is to be constructed, maintained, or operated are the city of Chillicothe, in the county of Livingston, State of Missouri, and such point on the boundary line between the States of Missouri and Iowa as shall be deemed, after actual survey, to be on the most direct and feasible route for constructing, maintaining, and operating a railroad between the said city of Chillicothe and the city of Omaha, in the State of Nebraska.

48 SEC. 4. The length of said railroad shall be about ninety miles, and shall be made into or through the counties of Livingston, Davies, and Gentry, and into or through one or more of the following counties, to wit, Nodaway, Harrison, and Worth.

SEC. 5. The amount of capital stock of said company shall be three millions of dollars, divided into sixty thousand shares, of fifty dollars each.

SEC. 6. The names and places of residence of the directors of said company who shall manage its affairs for the first year, and until others are chosen in their places, are as follows:

Names.	Residence.
1. Will R. King.	Omaha, Nebraska.
2. S't Ad. Balcomb.	Omaha, Nebraska.
3. D. H. Solomon.	Glenwood, Iowa.
4. J. S. McIntyre.	Clarinda, Iowa.
5. J. B. Bell.	Chillicothe, Missouri.
6. Cha's V. Meade.	Chillicothe, Missouri.
7. L. D. Murphy.	Chillicothe, Missouri.
8. J. H. Hammond.	Chillicothe, Missouri.
9. P. Markey.	Chillicothe, Missouri.
10. Cha's V. Comstock.	Albany, Missouri.
11. W. C. Stewart.	Gallatin, Missouri.
12. Cha's P. Choteau.	S't Louis, Missouri.
13. E. M. Samuels.	S't Louis, Missouri.

49 SEC. 7. This association is organized under and subject to the laws of the State of Missouri contained in chapters sixty-two and sixty-three, of title xxiv, of the general statutes of Missouri, of 1865, possessing all and singular the powers therein contained.

SEC. 8. We, whose names are signed hereto as subscribers to the capital stock of the S't Louis, Chillicothe, and Omaha Railroad Company, hereby agree to be governed by the foregoing articles of association, and to pay the several sums set opposite our names to the directors or their authorized agent whenever called on so to do.

Witness our signatures and amounts thereto annexed:

Signatures.	Amount.
1. Will R. King, Omaha, Nebraska, one hundred shares.....	$5,000
2. S't Ad. Balcomb, Omaha, Nebraska, one hundred shares...	$5,000
3. J. S. McIntyre, Clarinda, Iowa, five shares.....	$250
4. Cha's G. Comstock, Albany, Mo., three hundred shares....	$15,000
5. P. Markey, Chillicothe, Mo., one hundred shares.....	$5,000
6. L. D. Murphy, Chillicothe, Mo., one hundred shares.....	$5,000
7. J. H. Hammond, Chillicothe, Mo., three hundred shares...	$15,000
8. Cha's P. Choteau, S't Louis, Mo., two hundred shares.....	$10,000
9. E. M. Samuels, S't Louis, Mo., one hundred shares.....	$5,000
10. Chas. V. Meade, Chillicothe, Mo., two hundred shares.....	$10,000
11. W. C. Stewart, Gallatin, Mo., five shares.....	$250
12. D. H. Solomon, Glenwood, Iowa, one hundred shares.....	$5,000
13. James B. Bell, Chillicothe, Mo., two hundred shares.....	$10,000

50 STATE OF MISSOURI,
County of Livingston, ss:

We, the undersigned, directors of the S't Louis, Chillicothe, and Omaha Railroad Company, do solemnly swear that at least one thousand dollars of stock for every mile of railroad proposed by the within articles to be made has been subscribed and at least five per cent. paid thereon in good faith to the directors thereof, and that it is intended in good faith to construct or maintain and operate the road mentioned in the said articles of association.

J. H. HAMMOND.
PETER MARKEY.
CHA'S G. COMSTOCK.

Subscribed and sworn to this eleventh day of July, A. D. 1868.
[SEAL.] CHA'S V. MEADE,
Notary Public.

And the demurrer filed as aforesaid is as follows, to wit:

Demurrer.

In the circuit court of the United States for the western district of Missouri.

ALFRED HUIDEKOPER }
vs. } 411.
DAVIESS COUNTY. }

Defendant, by its attorney, Willard P. Hall, demurs to plaint-
51 iff's amended petition for the following causes:

First. The matters and things stated in said petition are not sufficient in law to constitute a cause of action against the defendant.

Second. Said petition shows that the election mentioned therein at which the qualified voters of Daviess County assented to the subscription to the capital stock of the Chillicothe and Omaha Railroad Company was held before said company had any existence or organization under the laws of Missouri.

Third. Petition shows that said bonds were issued without authority of law.

Fourth. Because the matters and things pleaded in said amended pe-

tition do not estop this defendant from setting up a defence to plaintiff's causes of action set forth in said petition.

Fifth. Because the judgment pleaded in said amended petition does not estop defendant from pleading in bar to merits in defense to the causes of action in said petition set out.

WILLARD P. HALL,
Att'y for Def't.

And afterwards, at said regular stated term of said circuit court the following proceedings were had in this case on the same day:

52 *Certificate of division filed.*

ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY.

This day there is filed a certificate of division of opinion between the judges containing certain questions of law arising upon the demurrer to the petition herein, which certificate is now signed and ordered to be filed and made a part of the record herein.

Which said certificate of division so filed is as follows, to wit:

Certificate of division.

At a circuit court of the United States, begun and held at Jefferson City, for the western district of Missouri, on Monday the 15th day of November, 1875.

Present, the honorable John F. Dillon, circuit judge, and Arnold Krekel, district judge.

ALFRED HUIDEKOPER } 411.
vs.
DAVIESS COUNTY.

NOVEMBER 22ND, 1875.

And now this day this cause coming on to be heard on the demurrer filed herein by the defendant to the plaintiff's petition and supplemental petition as amended, and the said demurrer having been overruled, and the defendant having elected to abide by its demurrer, and
53 refused to plead further, and final judgment having been entered thereon by the court against the defendant,

It is now hereby certified, as provided by law, by the said judges, that their opinions were opposed upon the following questions which occurred on the trial and hearing of the said suit or proceeding as follows:

First. Whether the bonds for the collection of the interest coupons of which this suit was brought were issued without due authority of law, and are void in the hands of a bona fide purchaser for value, because the railroad company to which said bonds were issued in payment of capital stock by it subscribed was not created according to law until subsequent to the favorable vote of the qualified voters and the order of subscription.

Second. Whether the former judgment recovered by the plaintiff in a former suit in this court against this defendant upon interest coupons from the same bonds again set forth in this suit estops the defendant from pleading in bar to the merits herein.

Done this 22nd day of November, A. D. 1875.

JOHN F. DILLON.
A. KREKEL.

54 And afterwards, at said regular stated term of said circuit court, the following further proceedings were had in this case on the 23rd day of November, A. D. 1875, to wit:

Writ of error allowed.—Citation presented & signed.

ALFRED HUIDEKOPER
vs.
DAVIESS COUNTY. } 411.

This day a writ of error to reverse the judgment of this court in this case rendered is presented to the court, and also a citation directed to the said plaintiff admonishing him to appear at a Supreme Court of the United States, on the second Monday of October next, which writ of error is allowed and citation signed by the court.

And afterwards, on the 16th day of December, A. D. 1875, it being in vacation of said circuit court, the following proceedings were had in said case, to wit:

ALFRED HUIDEKOPER
vs.
DAVIESS COUNTY. } 411.

This day there is presented an appeal bond in the above cause, which is duly approved by the honorable Arnold Krekel, judge, and ordered to be filed, and which appeal bond is as follows, to wit:

55 *Appeal bond.*

Know all men by these presents that we, Daviess County, Missouri, as principal, and John Bollenger, Benton Miller, S. P. Cox, S. A. Richardson, Tho's J. Brown, W'm M. Bostaph, & D. Harfield Davis, as sureties, are held and firmly bound unto Alfred Huidekoper in the full and just sum of five hundred dollars, to be paid to the said Alfred Huidekoper, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this thirteenth day of December, in the year of our Lord one thousand eight hundred and seventy five.

Whereas lately at the November term, A. D. 1875, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between Alfred Huidekoper, plaintiff, and the county of Daviess in the State of Missouri, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Alfred Huidekoper citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such, that if the said county of Daviess shall prosecute said writ to effect and answer all

damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

DAVIESS COUNTY, MISSOURI,
By GABRIEL FEURT,
P. J. of Co. Court.

JOHN BALLINGER.	[SEAL.]
BENTON MILLER.	[SEAL.]
S. P. COX.	[SEAL.]
S. A. RICHARDSON.	[SEAL.]
THO'S J. BROWN.	[SEAL.]
W'M M. BOSTAPH.	[SEAL.]
D. HARFIELD DAVIS.	[SEAL.]

Sealed and delivered in presence of—
JNO. P. SMITH,
Co. Clerk.

Approved by—

A. KREKEL,
Judge.

56 STATE OF MISSOURI,
County of Daviess, ss:

This day personally appeared John Ballinger, who being duly sworn, upon his oath says that he is well acquainted with the within named John Ballinger, Benton Miller, S. P. Cox, S. A. Richardson, Thomas J. Brown, W'm M. Bostaph, and D. Harfield Davis, and that each one of them is the owner of unincumbered real estate subject to execution of the value of five hundred dollars, and further saith not.

JOHN BALLINGER.

Subscribed and sworn to before me this 13th day of December, A. D. 1875.

JNO. P. SMITH,
Clerk of the County Court, Daviess County, Mo.

(Indorsed:) No. 411. United States circuit court, western district of Missouri. Alfred Huidekoper vs. Daviess Co. Appeal bond, $500.00. Dated 13th day of Dec., 1875. Filed 16th day of Dec., 1875. H. C. Gresberg, clerk.

57 *Certificate.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western district of Missouri, do hereby certify that the writing hereto annexed is a true, full, and complete transcript of all the pleadings and proceedings in case No. 411, wherein Alfred Huidekoper is plaintiff, and the county of Daviess, in the State of Missouri, is defendant, as fully as the same remains on file and of record in said case in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this 2nd day of February, A. D. 1876.

[SEAL.] H. C. GEISBERG,
Clerk.

(Endorsement on cover:) No. 359. The County of Davis, plaintiff in error, vs. Alfred Huidekoper. W. Missouri, C. C. U. S. Filed 24th February, 1876.

In the Supreme Court of the United States.

THE COUNTY OF DAVIESS, Plaintiff in Error,

AGAINST

ALFRED HUIDEKOPER, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

WILLARD P. HALL, *Attorney for Plaintiff in Error.*

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

THE COUNTY OF DAVIESS, Plaintiff in Error,

AGAINST

ALFRED HUIDEKOPER, Defendant in Error.

This is a suit upon certain coupons formerly attached to bonds issued by Daviess County to aid in the construction of the Chillicothe & Omaha Railroad Company. The petition is in the usual form.

To this petition an answer was filed setting up as defense that the question whether said county should subscribe for stock to said railroad company was submitted to the qualified voters of said county at an election held in April, 1868, and that at the time of said election there was no such company, and that said company was not organized until July after said election. (See p. 2, also pp. 16 and 17 of printed record.)

To this answer plaintiff replied, (see p. 31 of printed record,) and to this reply a demurrer was filed. (See p. 32 of printed record.) Afterwards, by agreement of parties, the demurrer, reply and answer were withdrawn, and the plaintiff amended his petition so as to show that said railroad company was not organized until after the people voted to subscribe to its stock, and also alleging a former judgment of certain coupons different from the cou-

pons sued upon. (See p. 33 of printed record, and p 14 of the same.)

To this amended petition defendant filed a general demurrer. (See pr 32 of printed record.)

Afterwards, the last demurrer was taken up and argued, and judgment went for plaintiff. The Judges also filed a certificate that their opinions were opposed upon the following questions, which occurred on the trial and hearing of the said suit or proceedings as follows:

First. Whether the bonds for the collection of the interest coupons, for which the suit was brought, were issued without due authority of law and are void in the hands of a bona fide purchaser for value, because the railroad company to which said bonds were issued in payment of capital stock by it subscribed, was not organized according to law, until subsequent to the favorable vote of the qualified voters and the order of subscription.

Second. Whether the former judgment recovered by the plaintiffs in a former suit in this Court against the defendant upon interest coupons from the same bonds, again set forth in this suit, estops the defendant from pleading in law to the merits herein. (See p. 36 of printed record.)

Daviess County brings this case here by writ of error.

ASSIGNMENT OF ERROR.

Plaintiff in error assigns as error that the judgment below was for the plaintiff in that Court, when it should have been for the defendant there, the present plaintiff in error.

BRIEF.

It is admitted by the pleadings that Daviess County was authorized by law to subscribe to the capital stock of the Chillicothe & Omaha Railroad Company, and to issue its coupon bonds in payment therefor, upon a vote of the people; that the people sanctioned said subscription by their votes at an election held in said county in April, 1868; that at the time of said election and the subscription for stock by said county, no such railroad company existed; that said company was not organized according to

law until July, 1868, while said election was held in April, 1868; that a former suit was brought by plaintiff Huidekoper against said county on certain coupons attached to said bonds; that Daviess County demurred to the petition in said former suit, and that judgment went for plaintiff on said demurrer.

The first of the questions on which the Judges of the Circuit Court were opposed in their opinions, has been decided by the Supreme Court of Missouri in favor of the plaintiff in error in the case of Shain vs. Ruby, 54 Missouri, 207 *et seq.* As this is a case arising under the constitution and laws of Missouri, the decision of the Supreme Court of Missouri, just referred to, is binding on this Court. Mr. Justice Hunt, speaking for the Court, in this case of Adams vs. Nashville, says: "This is a decision of a State tribunal upon the construction of its own statutes, which we are bound to respect." 95 United States, 21. See also 94 U. S., 70; *id.*, 264; *id.*, 181; *id.*, 260. Mr. Justice Davis, delivering the opinion of this Court in the case of the Township of Elmwood vs. Macy, says: "We are not called upon to vindicate the decisions of the Supreme Court of Illinois, or approve the reasoning by which it reached its conclusions. If the questions had never been passed upon by it, some of my brethren might take a different view of them. * * * We have always followed the highest Court of the State in its own construction of its own constitution and laws. * * * If a different rule were observed, it is not difficult to see that great mischief would ensue." 92 U. S., 294; *id.*, 575; Townsend vs. Todd, 91 U. S., 453.

The second question upon which the opinions of the Court below were opposed, viz: whether the former judgment recovered by plaintiff, estops the defendant from pleading in bar to the merits in the case, has been decided in favor of the plaintiff in error by this Court in the late case of Cromwell vs. County of Lee, 94 U. S., 351.

WILLARD P. HALL,
Att'y for Plaintiff in Error.

No. 95.

IN THE

SUPREME COURT OF THE UNITED STATES

THE COUNTY OF DAVIESS, Plaintiff in Error,

vs.

ALFRED HUIDEKOPER, Defendant in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF DEFENDANT IN ERROR.

JOSEPH SHIPPEN,
Attorney for Defendant in Error.

Hackstaff Print, Singer Building.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1878.

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ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

The defendant in error, who was plaintiff below, brought this suit to collect from the County of Daviess, Missouri, the amount of 44 interest coupons for $35 each, formerly attached to bonds issued by said county to the Chillicothe and Omaha Railroad Company, to aid in the construction of its railroad. The demurrer to the amended petition was over-ruled, and final judgment for the amount of the coupons was thereupon rendered by the court below, which certified a division of opinion on points presented.

omitting repetition in the several counts, was as follows: (Record 14.)

"And for cause of action the plaintiff states that the defendant heretofore, to wit, on the first day of July, A. D. 1869, by its certain writing-obligatory called railroad bond number 38, sealed with its corporate seal and signed by Peter Bear, the then presiding justice of the county court of said Daviess County, and attested by William Bostaph, the then clerk of said county court, and dated the day and year aforesaid, and here shown to the court, acknowledged itself indebted and firmly bound to the Chillicothe and Omaha Railroad Company in the sum of one thousand dollars, which sum the said county promised to pay to the said Chillicothe and Omaha Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, State of New York, on the first day of July, 1889, together with interest at the rate of seven per centum per annum, which interest was made payable semi-annually on the first days of January and July of each year, on the presentation and delivery at said bank of the coupons of interest thereto attached; *which said writing-obligatory was issued under and pursuant to an order of the county court of said Daviess County made under authority of the constitution and general statutes of the state of Missouri, and authorized by over two-thirds majority of the qualified voters of said county, at an election held Tuesday, April 7th, 1868, as is therein recited.* And plaintiff states that by a certain interest coupon number 11, formerly attached to said bond, and bearing even date therewith, herewith filed, the defendant acknowledged to owe to bearer the sum of thirty-five dollars on the first day of January, 1875, being interest on said bond number 38 for one thousand dollars, and promised to pay the same at the National Bank of Commerce, in the city of New York, State of New York; which said coupon was duly presented at maturity at said bank, and payment thereof was demanded, which was refused; and the plaintiff is the owner, holder, and bearer of said coupon, and the same remains due and unpaid.

And the plaintiff further states that the said Chillicothe and

Omaha Railroad Company was organized under and by virtue of the general statutes of the State of Missouri, filed with the secretary of state on the fourteenth day of July, 1868, a certified copy whereof is herewith filed and made a part of this petition. That said bonds were executed and *sold for value* by the officers of said county, and the proceeds of said sale, when received, were delivered to the said railroad company in payment of a subscription of said county to the capital stock of said railroad company to aid in the construction of its railroad made in pursuance of said vote, and said county *received the said capital stock and has claimed and exercised the rights of a stockholder in said company*, whose railroad was in fact built and completed through said county's territory, and said county *levied and collected taxes* for several years to pay the interest of said bonds, and *did pay* several instalments as they matured. And the plaintiff further states that on the 28th day of March, 1874, the plaintiff herein instituted in this court a certain other suit against the defendant herein, which suit was designated as number 261, April term, 1874, upon twenty-two interest coupons from the same bonds herein sued on, due July 1, 1873, and twenty-two interest coupons, from the same bonds due January 1, 1874, and the defendant therein appeared and filed its demurrer to plaintiff's petition, which said demurrer was subsequently withdrawn; defendant saying nothing further in bar of the action of the plaintiff, it was therefore *considered, ordered and adjudged* by the court, that the plaintiff have and recover against the defendant, as well the sum of fifteen hundred and eighty-three dollars and sixty-four cents for his debt and damages aforesaid assessed, as also his costs and charges in that behalf, laid out and expended and have thereof execution; and thereafter the defendant paid to the plaintiff the amount of said judgment with costs, and satisfaction thereof was duly entered of record.

Wherefore plaintiff prays judgment against the defendant for the aggregate amount of thesaid coupons together with interest thereon at 7 per cent per annum, from maturity, costs, &c."

DEFENDANT'S DEMURRER

Assigned the following grounds: [Record, 35.]

First. The matters and things stated in said petition are not sufficient in law to constitute a cause of action against the defendant.

Second. Said petition shows that the election mentioned therein, at which the qualified voters of Daviess county assented to the subscription to the capital stock of the Chillicothe & Omaha Railroad Company, was held before said company had any existence or organization under the laws of Missouri.

Third. Petition shows that said bonds were issued without authority of law.

Fourth. Because the matters and things pleaded in said amended petition do not estop the defendant from setting up a defense to plaintiff's causes of action set forth in said petition.

Fifth. Because the judgment pleaded in said amended petition does not estop defendant from pleading in bar to merits in defense to the causes in action in said petition set out.

THE CERTIFIED QUESTIONS

Were as follows: [Record, 36.]

First. Whether the bonds for the collection of the interest coupons of which this suit was brought were issued without due authority of law, and are void in the hands of a *bona fide* purchaser for value, because the railroad company to which said bonds were issued in payment of capital stock by it subscribed was not created according to law until subsequent to the favorable vote of the qualified voters and the order of subscription.

Second. Whether the former judgment recovered by the plaintiff in a former suit in this Court against this defendant upon interest coupons from the same bonds again set forth in this suit, estops the defendant from pleading in bar to the merits herein.

ARGUMENT.

I.

The *first* certified question should be answered in the negative. The bonds were issued with due authority of law, and are valid in the hands of a *bona fide* purchaser for value.

The petition averred that the bonds from which the coupons sued on were detached were issued pursuant to an order of the county court of Daviess county, made under authority of the constitution and general statutes of the state of Missouri, and authorized by over two-thirds majority of the qualified voters of said county at an election held April 7, 1868, as is by said bonds recited.

The *constitution* provides (1 Wagner's Statutes, 62), section 14 of article 11:

"The general assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein shall assent thereto."

The *general statutes* provide (1 Wagner's Statutes, 295,) how railroad companies may be formed, and further provide (Idem 305):

"Section 17. It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town, to take stock for such county, city, or town in, or loan the credit thereof to. any railroad company duly organized under this or any other law of the state: *Provided*, that two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent to such subscription.

men. Hence it may signify a firm, house or partnership, or a corporation."

An association is defined to be "a union of persons in a company; a society formed for transacting or carrying on some business for mutual advantage; a partnership."

A corporation is defined, in the language of Blackstone, to be "a body politic or corporate, formed and authorized by law to act as a single person."

Where any number of persons not less than five sign articles of association for the purpose of constructing a railroad, giving a name to the company, the time of its continuance, the termini of the road, the probable length of the road, the counties through which the road is to be made, the amount of stock, and the names and residence of the directors, this is a railroad company under the law.

1 Wag. Mo. Stat., Title Railroad Companies, § 1, p. 295.

This organization is "a railroad company" but not yet a "corporation." This company may proceed to build and operate a railroad as a firm or partnership. If it desires to become incorporated it must proceed further. "On compliance with the provisions of the third section of this chapter, such articles of association may be filed in the office of the secretary of state, who shall endorse thereon the day they are filed and record the same in a book to be provided by him for that purpose; and *thereupon* the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company, shall be a corporation by the name specified in such articles of association," &c.

Section 3 provides that "such articles of association shall not be filed and recorded in the office of the secretary of state," until a certain amount of stock shall be subscribed and a certain per centage thereon paid, nor until at least three directors named in the articles of association shall make a certain affidavit, &c.

Again, the 55th section above quoted of the same act provides: "In all cases hereafter where a railroad or branch railroad in this state shall be built *in whole* or in part by

subscriptions to its stock by counties, cities, or townships, the proceeds," &c.

As the same law provides that one thousand dollars per mile must be subscribed *bona fide* before incorporation, the inference is directly drawn that a county can take this preliminary stock, if it is able to build the railroad *in whole* by its subscription as above contemplated. The bonds are dated July 1, 1869.

There is nothing in the petition as to when the subscription to the company was in fact made. From the articles of association (printed Record, page 34,) it is apparent that the subscription of defendant formed no part of that required for the incorporation of the company. Hence there is no basis for the court below adding the last five words to its first certified question, viz.: "*and the order of subscription.*" That the vote occurred prior to incorporation is stated; but in the absence of averment in the petition as to when the subscription was made, it is presumable that it was regularly made *after* the company was incorporated, and not before.

County of Cass, vs. Johnson, 95 U. S., 360–369.

SECOND.—THE DEFENDANT CANNOT IN THIS ACTION BE HEARD TO DENY THAT THE CORPORATION TO WHICH THE BONDS WERE ISSUED WAS NOT DULY ORGANIZED AT THE DATE OF THE SUBMISSION AND VOTE SUCH PRINCIPLE OF ESTOPPEL IS ESTABLISHED BY THE DECISION OF THE SUPREME COURT OF MISSOURI AS WELL AS OTHER STATES, AND BY THE DECISIONS OF THIS COURT.

City of St. Louis vs. Shields, 62 Mo, 247.
Smith vs. Clark County, 54 Mo. 58.
Farmers &c., Ins. Co. vs. Benneron, 52 Mo. 17.
Camp vs. Byrne, 41 Mo, 525.
Ohio & Mississippi R. R. Co. vs. McPherson, 35 Mo. 124.
State Bank vs. Merchants Bank, 10 Mo. 124.
Hamtramck vs. Bank of Edwardville, 2 Mo. 169.

In the above cited case of St. Louis vs. Shields, 62 Mo., 247, the plaintiff, "The Board of Commissioners for filling up certain slough ponds in the city of St. Louis," sued the defendants as makers of a bond given to secure the faithful performance of a contract. The defendants denied plaintiff corporate existence.

The Supreme Court says, page 251: "There is another principle which is fatal to the defendants. When they entered into the obligation and signed the bond, they solemnly admitted plaintiff's corporate capacity. In such a case, a plea of *nul tiel* corporation cannot be permitted. [State vs. Carr, 5 N. H. 367; President &c., vs. Thompson, 20 Ills. 200; Hamilton vs. Carthage, 24 id. 22; Kayser vs. Bremen, 16 Mo. 88.]

Judge Cooley says that in proceedings where the question whether a corporation exists or not, arises collaterally, the courts will not permit its corporate character to be questioned. If it appears to be acting under color of law and recognized by the state as such, such a question should be raised by the state itself, by *quo warranto* or other direct proceeding. And the rule would not be different, if the constitution itself, prescribed the manner of incorporation. Even in such a case, proof that the corporation was acting as such under legislative action, would be sufficient evidence of right, except as against the state; and private parties could not enter upon any question of regularity [Cooley's Const. Limit, 254.] Again, the same learned author says that there are cases where a law in its application to a particular case must be sustained, because the party who makes objection has by prior action precluded himself from being heard against it, and this is applicable alike to constitutional provisions and legislative enactment where mere monied interests are concerned. [Id. 180.]"

In Smith vs. Clark County, 54 Mo. 58, which was a suit for the collection of interest on municipal bonds issued by defendant to a railroad company, the court in its opinion on a motion for a rehearing, says [page 81]:

"The only new point in this motion, not passed on by the court, is, that the charter of the company had ceased before the company was organized. Whether the corporation had a legal existence or not, when the subscription was made, is a question that cannot be raised in a collateral proceeding. It did exist as a matter of fact, and was in the exercise of all its chartered franchises, when the subscription was made and the bonds issued. The only proper way to test this matter is by a direct proceeding by the sovereign power of the state. It is a question between the state and the company and a proceeding

by way of *quo warranto* is the proper remedy. [State Bank vs. Merchants Bank of Baltimore, 10 Mo. 124.]

Recent decisions of this court are cited as follows:

Town of Coloma vs. Eaves, 92 U. S. 484, 491.
County of Randolph vs. Post, 93 U. S. 502.
County of Leavenworth vs. Barnes, 94 U. S., 70.
Commissioners of Douglas County vs. Bolles, 94 U.S. 104.
Commissioners of Johnson Co. vs. Thayer, 94 U. S. 631.
County of Cass vs. Johnson, 95 U. S. 360–369.

This Court has never held that it was the duty of the purchaser of such securities to ascertain the fact that the railroad company to which they were issued was duly organized. Such burden would materially interfere with the free circulation of these securities in the money markets for which they were designed. Such question does not go to the power to issue. That is expressly conferred by statute. The qualifications limitations and restrictions are for the county court to pass upon. It was the tribunal constituted by law to determine whether the Chillicothe & Omaha Railroad Company was "duly organized" or not. The people had it in their power to vote the proposition down, or to invoke the aid of the courts to prevent an improper or irregular or premature exercise of the power conferred by the statute.

But after the bonds have been issued and sold for value by defendant's officers, and the proceeds have been delivered to the railroad company which issued its stock in return, and the defendant receiving said stock claimed and exercised the rights of a stockholder therein and received the benefit of a completed railroad through its territory, and after defendant levied and collected taxes for several years to pay the interest of said bonds and paid several instalments thereof, it cannot maintain the objection herein made.

In Town of Coloma vs. Eaves, 92 U. S., 484, the Court, says (p. 491):

"Where legislative authority has been given to a municipality or to its officers to subscribe for the stock of a railway company and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the sub-

scription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been made in the bonds issued by them and held by a *bona fide* purchaser is conclusive of the fact, and binding on the municipality; for the recital is itself a decision of the fact by the appointed tribunal."

In County of Randolph vs. Post, 93 U. S., 502, the Court, says (p. 513):

"We should unreasonably restrict the rights and powers of a municipal corporation were we to hold that it did not possess the power to alter its legally made contract by waiving conditions found to be injurious to its interests, or that it could not estop itself like other parties to a contract. Citing—

Bigelow on Estoppel, 464.
Moran vs. Commissioners, 2 Black, 722.
Zabriskie vs. Cleveland, 23 How., 400.
Pendleton vs. Amy. 13 Wall, 297.
1 Dillon Mun. Corp., 375, 383, 385, 398."

In County of Leavenworth vs. Barnes, 94 U. S., 70, the Court says (p. 72):

"*Third.* It is objected, again, that the bonds were issued to the Leavenworth & Missouri Pacific Railroad Company, whereas it is alleged that no such company was in existence on the 21st day of January, 1865, when the election was held, or on the 1st day of July, when the bonds were issued. This company was organized in 1860, under the name of the Missouri River Railroad Company, and on the 18th of April, 1865, it consolidated with another company, increased its capital, and changed its name to that of the Leavenworth & Missouri Pacific Railroad Company. We suppose this to have been authorized by the statutes of Kansas,—Laws 1862, p. 768. We are certainly of opinion that when the parties interested in the two companies are content; when the newly named compauy has been in operation for ten years; when the county has received and held its stock until 1869, when the same was sold by the county by authority of the legislature--it is not competent for such a contracting party to say that there was an irregularity in the organization of the company."

In Commissioners of Douglas County vs. Bolles, 94 U. S., 104, this Court says (p. 105):

"Whether the St. Louis, Lawrence & Denver Railroad Company was lawfully a corporation, capable of contracting with the defendants below, is a question that cannot be raised in this case.

In Commissioners of Johnson County vs. January, 94 U. S. 202, the Court says: "The road was finished and has since been in operation. The county and itsinhabitants are in the enjoyment of the benefits arising from it.

There is no imputation of any taint or fraud upon either side.

The county authorities paid the interest upon the bonds for a time.

The county has received what it contracted to receive and has paid what it contracted to pay.

The plaintiff in the suit is the *bona fide* holder of the bonds.

A case of stronger equity can hardly exist.

* * * *

This act like the act of 1868, authorized the commissioners to issue the bonds when the requirements of the law had been complied with. They were thus constituted a tribunal for the adjustment of all questions touching the subject. They were clothed with the power and charged with the duty to decide them. No appeal or review was provided for. Their issuing the bonds was the reflex and embodiment of their judgment, that it was proper to do so. It implies a prior determination to that effect. The fact carries with it this presumption. The bonds recite that they were issued in conformity to law and in pursuance of the election held on the 6th of April, 1869. It is true they refer to the wrong statute, but *falsa demonstratio non nocet.* The bad here does not hurt the good. The act of the commissioners was the act of the county and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no question involving the infirmity of the securities can be raised. The principal of estoppel applies, and it precludes the obligor from interposing such a defense. Whether the certificate of the Auditor of State indorsed on the bonds, has or has not the same effect, is a point not necessary

scription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been made in the bonds issued by them and held by a *bona fide* purchaser is conclusive of the fact, and binding on the municipality; for the recital is itself a decision of the fact by the appointed tribunal."

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in this case to be considered. Taking and holding the certificate of stock, issuing and delivering the bonds, and paying the interest for a time, cured the defect as to the order for an election if any such existed. Under the circumstances a *bona fide* taker had the right to presume that everything had been properly done which was necessary to the validity of the bonds. When this suit was instituted, the objections which have been made were too late. The views we have expressed, have been repeatedly sustained by the adjudications of this court." (See numerous cases cited.)

THIRD.—THE DECISION OF THE SUPREME COURT OF MISSOURI, IN THE CASE OF RUBEY VS. SHAIN, 54 MO. 207, IS NOT AN AUTHORITY TO BE RELIED ON OR FOLLOWED IN THIS CASE.

Thereupon plaintiff in error, according to its brief, page 3, rests its case.

This was a suit against the collector of Macon county and his surities to recover back a tax of fifty dollars paid by plaintiff on an assessment against his property levied by the county court to pay interest on a subscription made under the "Township Aid Law" of 1868, in behalf of Hudson Township, to a railroad company which was not incorporated until after the submission and vote of the people required by law.

The judgment was reversed on the SOLE ground, based on principle and authority that the collector was not liable in such an action. Pages 211, 212.

This in logical order would have been the first part of the decision, and being decisive of the case would have ended it. The court might have rested there. But the court went on to say that the vote and subscription were illegal and the bonds unauthorized and void even in the hands of *bona fide* purchasers for value, because the railroad company was not organized at the time of the vote. Clearly all this was an *obiter dictum*. It was not necessary to the decision of the case and formed no part of the ground on which the case was decided. The conclusion therefrom would have *sustained* the judgment of the court below instead of reversing it, as was done because the collector was not liable. No bonds were in suit; no holders, in-

nocent or guilty, were before the court. Neither the maker or the holders of the securities were before the court for any adjudication of their rights. Hence the decision, so far as it undertakes to pronounce the bonds void, is not an authority by which the Supreme Court of Missouri itself, would be bound in a direct issue between Macon County, representing Hudson Township, and the holder of the bonds. When such issue is presented that court would on sound legal principles, regard the question as properly raised for the first time. *A fortiori* that case does not furnish a precedent which is binding upon this court to compel it to maintain this writ of error.

In Commissioners vs. Thayer. 94 U. S. 631, this Court, says (page 641):

"The state court did in its language hold that the objection raised in the present case, to wit, that the name of the corporation was not inserted in the proposition for the popular vote, was fatal. Had this been the only or indispensable part of the decision we should have been called upon to inquire whether the decision was one of that class of state decision upon its own statute that was binding upon us. The other question, however, existing and decided in the Bourbon County case, was in its nature so exclusive, and so controlling, that anything said, or professed to be decided beyond it, does not require much consideration. The court held that in the exercise of its general jurisdiction, it had the power to inquire into the number of votes actually cast for and against the proposed issue of bonds, and upon making such inquiry it found and determined that, in fact, a majority of the votes cast were cast against the proposition."

In the County of Cass vs. Johnston, 95 U. S. 360, this Court says, (page 369):

"It is further insisted that the bonds sued upon are invalid, because the railroad company to which the subscription was voted was not incorporated until the day of the election; and Rubey vs. Shain. 54 Mo. 207, is cited in support of this objection. That case only decides, if it is to be regarded as authority, that a subscription cannot be made by a township until the company is incorporated, or rather that township subscriptions cannot be used to bring the company into existence. They are

to use the language of the judge in his opinion, not to be made the "nucleus around which aid is to be gathered." Here the company had been incorporated when the subscription was made. The decision relied upon, therefore, does not apply and we are not inclined to extend its operation. This makes it unnecessary to inquire whether this defense could be maintained as against an innocent holder."

Indeed, if the opinion delivered in Ruby vs. Shain had been rendered in a case, wherein a holder of Hudson Township bonds sued for their collection and the validity of the bonds was thus directly involved, the decision so rendered would not have been binding on this court.

Such question is not one merely of the local constitution and statutes of Missouri, whereon the Supreme Court of the state has put a judicial construction. It involves questions of a general character of the law applicable to negotiable securities to corporations and to estoppel. Herein this court has repeatedly held that it will be guided by its own precedents and convictions as to the law.

Gelpcke vs. Dubuque, 1 Wall. 175.
Butz vs. Muscatine, 8 Wall. 575.
Pine Grove Township vs. Talcot, 19 Wall, 666.

Hence this Court is free to pass upon the first certified question irrespective of the case of Rubey vs. Shain, and pursuant to principle and authority hereinbefore stated the decision should be for the defendant in error.

II.

The *second* certified question, viz: "Whether the former judgment recovered by the plaintiff in a former suit in this court against this defendant upon interest coupons from the same bonds again set forth in this suit, estops the defendant from pleading in bar to the merits herein;" should be answered in the affirmative.

This question arises on the averments of the petition admitted by the demurrer as follows:

And the plaintiff further states that on the twenty-eighth day of March, 1874, the plaintiff herein instituted in this court a certain other suit against defendant herein, which suit was designated as number 261, April term, 1877, upon twenty-two interest coupons from the same bonds herein sued on, due July first, 1873, and twenty-two interest coupons from the same bonds due January first, 1874, and the defendant therein appeared and filed its demurrer to plaintiff's petition, which said demurrer was subsequently withdrawn, defendant saying nothing further in bar of the action of the plaintiff; it was therefore considered, ordered and adjudged by the court that the plaintiff have and recover against the defendant as well the sum of fifteen hundred and eighty-three dollars and sixty-four cents for his debt and damages aforesaid assessed, as also his costs and charges in that behalf laid out and expended, and have thereof execution; and thereafter the defendant paid to the plaintiff the amount of said judgment with costs, and satisfaction thereof was duly entered of record."

Therefrom it appears that in a former suit between the same parties to collect prior maturing coupans from the same bonds, after appearance and demurrer by defendant such demurrer was withdrawn and judgment of *nil dicit* was had against the defendant.

Thereupon is raised the question of estoppel by former adju-

dication. The principle is based on the maxims: *Interest reipublicae ut sit finis litium; Nemo debet bis vexari pro una et eadem causa.*

Both public good and private right are involved in upholding the immunity of a litigant from being called on to contest in the courts the same subject a second time. Stability and repose and confidence in judicial decisions flow as natural consequences of the application of the doctrine.

The subject has repeatedly had the consideration of this court. The cases most directly in point are,

Aurora vs. West, 7 Wall, 82.
Beloit vs. Morgan, 7 Wall, 619.

In the latter case this Court says (p. 621):

"On the 9th of January, 1861, the appellee recovered a judgment at law against the appellant upon another portion of these securities—though not the same with those in question in this case. The parties were identical, and the title involved was the same. All the objections taken in this case might have been taken in that. The judgment of the court could have been invoked upon each of them, and if it were adverse to the appellant, he might have brought the decision here by writ of error for review. The court had full jurisdiction over the parties and the subject. Under such circumstances, a judgment is conclusive, not only, as to the *res* of that case, but as to all further litigation between same parties, touching the same subject matter, though the *res* itself may be different.

* * * *

Such has been the rule of the common law from an early period of its history down to the present time. But the principle reaches further. It extends not only to the questions of fact and of law, but also to the grounds of recovery or defense which might have been, but were not, presented. In Henderson vs. Henderson, 3 Hare, 115, the vice chancellor said:

"In trying this question I believe I state the rule of the court correctly, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to bring forward their whole case, and will not, except under special circum-

stances, permit the same parties to open the same subject of litigation, in respect of a matter which might have been brought forward as a part of the subject in contest, but which was not brought forward only because they have from negligence, inadvertence or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to the points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. A party can no more split up defences than indivisible demands, and present them by piecemeal in successive suits growing out of the same transaction. The judgment at law established conclusively the original validity of the securities described in the bill, and the liability of the town to pay them. Nothing is disclosed in the case which affects this condition of things."

Again, in Gould vs. Evansville, &c., R. R. Co., 91 U. S., 526, the above cases of Aurora vs. West and Beloit vs. Morgan were cited and the principles thereof affirmed.

The plaintiff in error cites the case of Cromwell vs. County of Sac, 94 U. S., 352, as decisive of the second certified question in its favor. But is such conclusion properly drawn? That case does not in terms overrule the former cases above cited or allude to them. This court therein says (p. 353):

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

In Tioga R. R. vs. Blossburg & Corning R. R., 20 Wall, 137, the plaintiff brought suit for the same class of receipts under a

contract whereon a former action had been brought and decided. This court says (p. 142):

"Some attempt has been made to show that in the suit brought in January, 1855, in the Supreme Court of New York, by the Blossburg company against the Tioga company on the contract now in question, the matter of the difference for which the present suit is brought was not a question decided. But we have looked at the record and proceedings therein, which were in evidence in this case, and are satisfied that it was decided. The report of the case in 1 Keyes, 486, shows that it was the only question before the Court of Appeals, to which court the case was carried. This point, then, is *res judicata* between the parties. It cannot be litigated again on the same contract.

Beloit vs. Morgan, 7 Wallace, 622.
Aurora City vs. West, Ib., 94.
Freeman on Judgments, § 256."

In the same case the Court says (page 44): "The question whether, upon the merits, the plaintiff is entitled to recover is no longer an open question. It was settled by the adjudication of the point by the highest courts of New York, in an action between the same parties and upon precisely the same facts. The record in the former suit was given in evidence in this suit, and is conclusive."

In the present case the parties are the same, and the coupons are from the same bonds that were involved in the former suit. It is presumable that the petition stated the bonds and coupons and the authority under which they were issued. By the defendant s refusing to plead further after withdrawing its demurrer, the allegations of the petition were taken as confessed. Applying then the principle enunciated in the last cited case, the question actually litigated and determined in the original action were the the averments of the petition. When they were confessed the judgment was rendered, and upon those matters the judgment is conclusive in this action.

Respectfully submitted,

JOSEPH SHIPPEN,

Attorney for Defendant in Error.